UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INDIANA BELL TELEPHONE COMPANY, INC.

and Case 25-CA-218494

COMMUNICATION WORKERS OF AMERICA
LOCAL 4900, A/W COMMUNICATION WORKERS
OF AMERICA, AFL-CIO

GENERAL COUNSEL'S BRIEF IN ANSWER TO RESPONDENTS' EXCEPTIONS TO THE ALJ'S DECISION

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I. STATEMENT OF THE FACTS

For years premises technicians wore union insignia during union mobilization efforts without Respondent Indiana Bell Telephone Company, Inc. asserting a work rule violation and issuing discipline; however, recently, Respondent revised its apparel guidelines, applied it to restrict employees' protected activity, and threatened discipline if not complied with. In March 2018, prior to contract expiration and as contract negotiations were about to commence, CWA Local 4900 members, including the premises technicians, participated in their mobilization efforts to show solidarity for the negotiation team such efforts consisted of wearing union buttons attached to Respondent branded shirts and union lanyards. The buttons stated, "We Demand Good Jobs CWA" and "CWA Fighting Today Focused on the Future".

The collective-bargaining agreement in effect at the time had a mandatory work apparel clause, referred to as the Branded Apparel Program (BAP), applicable to premises technicians. Respondent also had a revised set of guidelines for the premises and wire technicians that covered the BAP under Section 14 – Personal Appearance that stated, "the branded apparel may not be altered in any way". Respondent had maintained this branded work apparel rule since approximately April 8, 2016; however, uncharacteristically, on about April 16, 2018, Respondent enforced the rule to prohibit premises technicians from wearing union buttons and threatened premises technicians with discipline if the union button was not removed in violation of Section 8(a)(1) of the Act.

A. Respondent acquiesced in premises technicians wearing union insignia during mobilization efforts

Respondent and the Communications Workers of America (CWA) International Union have had a bargaining history for over 50 years that included a collective-bargaining agreement that was effective from April 12, 2015 until April 14, 2018. (GC Exhibit 2). The parties

bargaining relationship has been embodied in successive collective-bargaining agreements covering multiple job classifications including but not limited to premise technicians in the Indianapolis, Indiana area. Premises technicians are covered under Appendix F of the collective-bargaining agreement. (TR 92)

In 2009, the branded work apparel program was incorporated into the collective bargaining agreement. (TR 37) Notably, prior to 2009, the Union negotiated to include the Union's logo on the branded apparel. (TR 38) Prior to 2016, the personal appearance section read "The branded apparel may not be altered in any way which includes ***adding buttons, pins, stickers, writing etc***." (R Exhibit 4C ***emphasis added***). Since the inception of the branded work apparel program, premises technicians wore union insignia during mobilization efforts in 2009, 2012, and 2015, and no employees were disciplined (TR 40, 67, 68, 124). Until mid-April 2018, there had been no instances of employees disciplined for wearing union insignia although employees had worn union button on branded apparel. Nor had Respondent enforced the personal appearance rule to prohibit the wearing of union buttons.

Although premises technicians were required to participate in the branded apparel program, Respondent traditionally acquiesced in premises technicians wearing union insignia during contract negotiations. (TR37, 30, 32, 34) Premises technicians were required to report to garages, where they were inspected by supervisors, and then dispatched into the field. (TR 86-87; 56) During the 2009, 2012, and 2105 mobilization efforts, premises technicians wore union buttons on the branded apparel to show solidarity for the bargaining process. (TR 30, 32, 34, 117) Managers were present in the garages before employees left to go out in the field. (TR34). The buttons were about the size of a quarter, red in color and read "CWA". (GC Exhibit 11) The employees involved were from the following garages: Ann Avenue, Carmel, 96th Street,

Post Road, Girl School Road, Moeller Road, Anderson, Muncie, Kokomo, Marian, South Bend, and Prairie, Mishawaka (TR 32). Timothy Strong, CWA Local 4900 President, testified that he saw employees in the field wearing union buttons in 2012 and 2015 in the South Bend and Indianapolis metropolitan areas, which are a part of Local 4900's geographical jurisdiction. (TR 32, 42).

In 2009, Preston Dorfmeyer, former Union area representative, lead the mobilization efforts in support of contract negotiations. Dorfmeyer distributed union buttons to employees, including the premises technicians. When Dorfmeyer visited the garages he was responsible for, he saw the premises technicians wearing the buttons. Managers were present in the garages and saw the premises technicians wearing the buttons as they left for their assignments. (TR 122-124)

This occurred in 2015 and 2018 as well. Danny Collum, CWA Local 4900 area representative, testified that managers were present in the garages when technicians wore union buttons when he led mobilization efforts. In 2015, Collum distributed a red button that read "CWA". (GC Exhibit 12) He saw employees wearing the buttons in garages and as they exited the garages. Managers were in the garages. (TR 56) In 2018, Collum also distributed lanyards and buttons. He distributed two types of buttons. The first button was red and was the size of the bottom of a Coke can that said, "Fighting Today, Focused on the Future". (GX Exhibit 13(a)). The lanyard had the same wording on it as the first button. (GC Exhibit 15). The employees also attached the button on the lanyards. (TR 56) The second button was red and was about the size of a quarter. It said "We Demand Good Jobs" with "CWA" on the button. (GC Exhibit 13(b)) (TR 56) Managers were present in the garages when premises technicians were wearing the buttons. (TR 56)

For this instant case, the branded work apparel program is still governed by Section 5.01 of the 2015-2018 collective bargaining agreement and the April 8, 2016 revised version of the Premises & Wire Technician Guidelines. Section 5.01 states

> The Company may, at its discretion, implement appearance standards and/or a dress code consistent with State and Federal laws. The Company may change the standards and code at its discretion. For the employees in Appendix F, participation in the U-verse Branded Apparel Program (BAP) is mandatory. The Company can modify or discontinue this program at its discretion. If the BAP is discontinued for the employees listed in Appendix F, the Company will give those employees a minimum of thirty (30) days prior to such discontinuance.

(GC Exhibit 3) (TR 49)

Notably, in 2016, Respondent gave the Union notice of the proposed updated premises and wire technician guidelines that went into effect in April 2016. (TR 40) Stephen Hansen, director of labor relations, provided Ron Gay, International Union staff representative for District 4, with notice of the 2016 premises and wire technician guidelines before they became effective via email on April 8, 2016. (TR 95) (R Exhibit 2) Hansen received a reply email from Gay indicating that he would call him if he had any questions. (R Exhibit 3). (TR 97) Hanson stated that neither Gay nor anyone else from the union contacted him to discuss the premises and wire technician guidelines. (TR 98). About a week after the Union had been given notice and there was no communication, Respondent authorized and implemented the revised guidelines. The local management team communicated the policy to employees. (TR 100)

In regards to Section 14.1 of the guidelines, it described the overall purpose of the appearance rules as "to ensure that AT&T technicians project and deliver a professional, business-like image to our customers and community." Angela Bickel, area manager, stated Respondent had the branded apparel program because they work in a competitive environment

and to remain professional in the eyes of their customers, they deem it necessary to look professional when they're in customers' homes. (TR 103) Other relevant parts include:

> 14.2 BAP is mandatory for all SD&A Premises & Wire Technicians on work time. No other shirt, hats, pants/shorts, shorts or jackets will be worn without management approval…
>
> 14.3 The branded apparel may not be altered in any way.

Additional provisions require the technicians to be neat, well-groomed, clean, and to wear their company-issued identification.

B. In March 2018, CWA Local 4900 commenced its mobilization efforts to show solidarity during the contract negotiations

Prior to the expiration of the collective-bargaining agreement, the Union started its mobilization efforts to coincide with contract negotiations at various Indianapolis garages, including 96th Street, 55th Place, East Washington, Post Road, Troy Avenue, Hanna Garage, and two on Post Road. (TR 59,60). The mobilization efforts, led by Danny Collum, CWA Local 4900 area representative, consisted of all technicians participating in informational picketing and wearing buttons attached to branded Company shirts and lanyards. (TR 54-55, 60).

In March 2018, Larry Robbins, CWA 4900 Division I Vice President, was informed that premises technicians could not wear the union buttons offsite. Robbins called Angie Bickel, area manager, and inquired about this. Bickel confirmed the policy prohibiting buttons attached to Respondent's branded Company shirts. Robbins then called Grace Biehl, lead labor relations, and asked Biehl whether Respondent said the premises technicians could not wear the union buttons. Biehl replied that was correct and that it was an alteration of the uniform. (TR 50) (GC Exhibit 10) Irrespective of Respondent's new stands on the union buttons and without incident of any discipline, the technicians continued to wear the buttons for a month. (TR 51)

C. On about April 16, 2018, Respondent, by Joseph St. Claire, threatened employees with discipline if they did not remove the Union button from the branded apparel.

On April 16, 2018 Joseph St. Claire, the manager of network services at the Hanna garage, conducted an inspection of the technicians at the start of the shift. St. Claire looked for boots tied, shirts tucked in, proper boots, and branded apparel. St. Claire noticed a premises technician, Terry, wearing a red CWA button on his shirt. St. Claire asked Terry to remove the button. Initially, Terry did not acknowledge him. St. Claire asked Terry again to remove the button. Terry refused. St. Claire told Terry that he was giving him a direct order, and if he refused, it would constitute insubordinate and potentially could lead to discipline up to and including dismissal. Respondent has a disciplinary policy that applies to the branded work apparel program. (GC Exhibit 5) Terry removed the button and stated he wanted to call Danny Collum, his union representative.

That same day, Collum received a phone call from Terry and was informed that employees had to remove the Union buttons or they would be insubordinate and face discipline. Collum travelled to the Hanna garage and spoke with some of the technicians on the front porch. Then Collum proceeded into the garage, spoke to St. Claire and at some point, St. Claire released the technician for work. (TR 61, 86-87)

Collum told St. Claire that the buttons were showing support for the bargaining team. After speaking with St. Claire, Collum went back to the front porch and called Larry Robbins, Union vice president, and informed him of the situation. Robbins, via email, informed Jerry Ouellette, director of network services, that he was concerned that the technicians were told they could not wear the lanyards and buttons provided by the Union. Ouellette forwarded the email to several individuals, including Angela Bickel, asking "Can you help me understand what was communicated this morning?" Bickel responded, "I had a tech attempt to leave with a button on

and he complied eventually after we told him not removing was considered insubordination. For now, we allowed him to leave with the lanyard on." (GC Exhibit 9)

In the meantime, Collum went back into the garage and called Bickel. Bickel confirmed that the technicians had to remove the buttons or face discipline. Bickel stated that the buttons could be construed by the public as negative and that they violated the branded apparel program. Collum disagreed with Bickel. After his conversation with Bickel, Collum called Grace Biehl, lead labor relations. Biehl informed Collum that the buttons altered the branded apparel and that the technicians would need to remove the buttons. Collum disagreed because he did not believe it was an alteration to the branded apparel. (TR 63) After the conversation with Biehl, Collum went to the union hall, conferred with Robbins, and wrote a grievance pertaining to the button issue. (GC Exhibit 16)

During the grievance meeting, St. Claire informed Collum that labor relations told him to instruct the employees to remove the buttons. St. Claire also stated that the buttons could be construed in a negative way. Collum responded that he disagreed because there were no acronyms that could be interpreted negatively. (TR 67)

II. ANALYSIS

A. Judge Rosas' Credibility Findings Should Be Sustained [Exceptions 1 – 10, 17, 18, 19, 20, and 21]

Regarding any and all of Respondents' exceptions based upon the Administrative Law Judge's credibility findings, the Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect. Here, there is no basis to reverse any of the Judge's findings. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951).

The record evidence, as detailed within this answering brief, supports the Judge's credibility findings. In particular, as noted herein, the Judge correctly found that the premises technicians wore Union buttons on branded Company shirts and lanyards in the Respondent's Indianapolis and South Bend garages, and on job assignments during collective bargaining in 2009, 2012, and 2015. In 2009, Dorfmeyer testified that he distributed union buttons to premises technicians and he saw them wear the buttons in garages and as they left to work sites in the presence of managers. No managers refuted this testimony. (TR 122-124) Strong and Collum uncontradicted testimony established that premises technicians wore union buttons in garages and while leaving to work sites in the presence of managers in 2012 and 2015. (TR 30-37, 40-42, 55-56, 67-68, 117, and 124) Strong also testified that he saw premises technicians in the field wearing union buttons in South Bend and Indianapolis metropolitan areas.

The Judge also correctly found that prior to April 2018, Respondent did not enforce the Branded Apparel Program ("BAP") Appearance standards set forth in the pre-2016 Premises Technician ("Prem Tech") Guidelines. The evidence revealed that during these time periods, Respondent had a disciplinary policy for violations of the apparel standards; yet, no discipline was every issued during this time period when premises technicians, in the presence of managers, wore Union buttons attached to branded Respondent shirts. (TR 40, 67, 68, 124) (GC Exhibit 5)

As well, the Judge correctly found that Bickel testified that she observed the rule being enforced in 2012 or earlier when technicians would attempt to wear a t-shirt over their uniforms. Bickel's testimony speaks for itself. Her testimony only focused on employees wearing t-shirts over Respondent branded shirts. (TR 102-105) Notably, Bickel did not rebut the evidence that

premises technicians wore union buttons on the Company branded shirts in 2009, 2012, 2015 and 2018.

The Judge correctly found that in conjunction with collective bargaining in March 2018, technicians displayed their support for the Union at several garages. The undisputed evidence revealed in March the Union, in conjunction with showing solidarity in the 2018 negotiations, distributed two types of red union buttons - the first button was the size of the face of soda can that said, "Fighting Today, Focused on the Future" (GX Exhibit 13(a)); and the second button was about the size of a quarter and said, "We Demand Good Jobs" with "CWA". (GC Exhibit 13(b)). Danny Collum, union representative, coordinated the mobilization efforts through informational pickets and distributing the buttons, which the technicians wore on Respondent branded shirt or attached to lanyards. The lanyard had the same words printed on it as the first button. The undisputed evidence revealed that Collum saw technicians wearing the buttons in the presence of managers at Respondent's garages and as they exited for the field. (TR 56)

The Judge correctly found that technicians wore CWA buttons on their branded Respondent shirts or attached to their lanyards. As discussed above, Collum credibility testified that premises technicians either wore the buttons attached to their branded Respondent shirts or the lanyards. Respondent via Angie Bickel, area manager, corroborates this testimony in an email acknowledging that a technician attempted to leave wearing a button but was allowed to leave with the "lanyard". The exhibit shows the button attached to the lanyard. (GC Exhibit 15)

The Judge also correctly stated that Respondent's labor relations arm instructed supervisors to enforce the 2016 guidelines; and notwithstanding Respondent's position regarding union buttons, the technicians continued to wear them without incident for about one month. Moreover, the Judge correctly concluded that on April 16, 2018, Respondent's labor relations

department directed its supervisors to remove union buttons just as the Union began mobilizing members for contract negotiations; on April 16, 2018, a Respondent supervisor first enforced the BAP Appearance standards at the direction of the Respondent's labor relations team; and Respondent's supervisor's enforcement of the BAP Appearance standards on April 16, 2018 "entwined the action within the collective bargaining process".

The uncontradicted evidence established that the Union engaged in its traditional mobilization efforts in 2018 in conjunction with the negotiations. In March 2018, after being informed that premises technician could no longer wear the union buttons, Robbins contacted Bickel and asked about the matter. Bickel confirmed that premises technicians could not wear the union buttons. Robbins then contacted Grace Biehl, lead labor relations, and asked for Respondent's position. Biehl concurred and stated it was an alteration of the uniform. (TR 50) (GC Exhibit 10) The uncontradicted evidence shows that for about a month before another incident premises technicians continued to wear the union buttons. (TR 50-51) No premises technicians were ever disciplined. (TR 40, 67, 68, 124) Notably, Bickel, Biehl, and St. Clair did not refute any of the testimony. Subsequently however, Collum's undisputed testimony revealed that St. Clair was instructed by labor relations to have employees remove the union buttons. (TR 67, 86-87).

The Judge correctly concluded that similar buttons had been worn by premises technicians over the previous nine years during similar activities and, in contrast to tee shirts, supervisors never ordered them to remove the buttons. Similarly, the Judge correctly found that employees were buttons frequently throughout bargaining sessions in 2009, 2012, and 2015, within sight of supervisors and without restraint.

Respondents testified that technicians attempted to wear t-shirts over the branded Respondent shirts and were prohibited from wearing them over the uniforms. (TR 102-105) There was no evidence in the record that the policy was every enforced against union buttons in previous years. To the contrary, the unrebutted evidence revealed that premises technicians wore union buttons during the Union's mobilization efforts in 2009, 2012, 2015 and commencing in 2018 in conjunction with negotiations to show solidarity for the union's bargaining team. (TR 30-37, 40-42, 55-56, 67-68, 117, 122-124) (GC Exhibits 11 and 12)

B. Judge Rosas Correctly Found that Respondent violated Section 8(a)(1) by maintaining an overly board 2016 BAP guidelines and discriminatorily enforcing it by prohibiting employees from wearing union insignia in the workplace [Exceptions 11, 12, and 22-24]

Employees have a statutory right to wear union insignia at work, absent the establishment of a special circumstance by Respondent. *P.S.K. Supermarkets*, 349 NLRB 34, 35 (2007); *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801-803 (1945); *Komatsu America Corp*., 342 NLRB 649, 650 (2004)[1]. Here, the premises technicians along with other employees directly engaged in protected activity in support of collective-bargaining when they wore the union buttons during contract negotiations to show solidarity for the negotiation team. The only defense among the special circumstances that Respondent asserts is that the union buttons interfered with its public image. The Judge had sound reason in finding that "the notion that the display of a CWA button appended to the Company's uniform unreasonably interferes with [the Company's] public image or business plan, when it already provides employees with a hat that bears the CWA and Company logos, is specious". Respondent's assertion of a public image defense is misleading base on the record evidence. Respondent already publicizes to its

[1] The Board in *Boeing* did not alter well-established standards regarding rules where the Board has already struck a balance between employee rights and employer business interests, such as the "special circumstances" test of apparel rules. *The Boeing Company*, 365 NLRB No. 154 (2017)

customers that it has a unionized workforce by authorizing the CWA logo to appear on its branded apparel. (GC Exhibit 14) Notably, the CWA logo is the same logo that is on the union buttons. No evidence was presented that Respondent experienced any adverse impact on its business because premises technician had worn the union buttons. Thus, the Judge's conclusion is reasonable based on the evidence. Furthermore, the Board has also held that exposure to union insignia alone does not create a special circumstance under the public image argument. *Meijer, Inc.*, 318 NLRB 50, 50 (1995); *Nordstrom, Inc.*, 264 NLRB 698, 700 (1982). In addition, the Board has also found that the requirement of wearing a uniform is not a special circumstance. *United Parcel Service*, 312 NLRB 596, 596-598 (1993). Moreover, the Board has held that applying a rule prohibiting all buttons, including union buttons, is not a special circumstance. *Harrah's Club*, 143 NLRB 1356, 1356 (1963).

The Judge correctly found that the Company's maintenance of the BAP Appearance standards set forth in the 2016 Prem Tech Guidelines contained an overbroad prohibition on the display of union insignia in the workplace in violation of Section 8(a)(1) of the Act. In the instant case, the evidence revealed that Respondent's stated purpose for maintaining the guidelines was to remain professional in the eyes of its customers. (TR 103). During the same time period it maintained the guidelines, the Company issued hats with ATT and CWA logos. (GC Exhibit 14) In addition, the Company acquiesced in premises technicians wearing union buttons during prior contract negotiation years. Then on about April 16, 2018, the Company applied its revised 2016 guidelines to prohibit premises technicians from wearing union buttons.

C. Judge Rosas Correctly Found that collateral estoppel is inapplicable and that neither the language of the revised 2016 guidelines nor the parties' conduct support a waiver argument [Exceptions 13, 14, 15, and 16]

The Judge's conclusion was correct that the administrative law judge decision in *Wisconsin Bell*, JD-67-16, is not controlling law. In addition to it lacking precedential weight, the facts of *Wisconsin Bell* are significantly different from the instant case; therefore, collateral estoppel is inappropriate. Unlike in *Wisconsin Bell*, in this case it is clear that within the past history the premises technicians had worn union buttons since at least 2009. Respondent was aware that technicians wore the buttons and never enforced its guidelines related to the buttons. Respondent acquiesced in technicians wearing union buttons during the period of contract negotiations in the Indianapolis area. Moreover, in contrast with *Wisconsin Bell*, here the revised 2016 guidelines did not specifically restrict wearing buttons on branded Respondent shirts.

Respondent argues that the Union waived its right to bargain over whether premises technicians can wear union insignia, including the buttons at issue in this instant case. However, the waiver argument is a mischaracterization of the issue in this case. There is no dispute that the terms of Section 5.01 of Appendix F of the 2015-2018 collective bargaining agreement and Section 14.3 of the Premises & Wire Technician Guidelines dated April 2016 govern the incident that occurred on about April 16, 2018 where St. Claire instructed an employee to remove a union button or face discipline for insubordination including up to termination. During the term of the contract, Section 5.01 gave Respondent the right, at its discretion, to implement or change "appearance standards and/or a dress code; however, all modifications had to be consistent with Federal and State laws. The 2016 revision did not exclude union insignia from branded Respondent shirts nor was there record evidence that the parties discussed and agreed to an exclusion.

Moreover, Respondent used its traditional process of implementing new procedures by taking the guidelines through its internal process. Respondent therefore consciously modified

the language. On April 8, 2016 via email, Hansen provide Ron Gay, International Union staff representative for District 4, notice that Respondent revised the premises and wire technician guidelines. Gay acknowledged via reply email stating that he would contact him if he had any questions. The revised guidelines including the following language changes "1***4.3 The branded apparel may not be altered in any way***" (emphasis added). This was a language change from previous versions which stated, "The branded apparel may not be altered in any way which included adding buttons, pins, stickers, writing etc.". The Union accepted the revised language.

Since at least mid-April 2016, the parties have been operating under the revised guidelines. The parties never discussed that the guidelines excluded wearing union insignia. It wasn't until March 2018 that the Union discovered Respondent took the position that premises technicians could not wear union buttons. On March 15, 2018, Larry Robbins immediately investigated the matter by calling Grace Biehl and then followed up the conversation with an email asking if Respondent was saying the premises technicians could not wear the buttons outside garages. Biehl replied that this was correct because it was an alteration to the uniform. (GC Exhibit 10) Nevertheless, the premises technicians continued to wear the buttons, and no one was disciplined. On about April 16, 2018, Respondent via St. Claire instructed premises technicians to remove the union buttons. St. Claire repeated these instructions to one of the technicians and told him that he could not leave until the button was removed and it would be insubordination if he did not and he would be disciplined up to terminated. The Union objected to this incident including filing a grievance and NLRB charge. In sum, the evidence does not support a waiver argument; yet, it clearly reveals that the parties accepted the modified language which did not exclude wearing union buttons or other union insignia.

Based on the record evidence enumerated above, the Judge also correctly found that neither the language of the 2016 guidelines nor the parties' conduct since April 2016 support a waiver of premises technicians' rights to wear union buttons. Although the contract provided the Company the discretion to implement appearance standards, it had to be consisted with State and Federal laws. When the Company modified its 2016 guidelines, it also mandated itself to comply with Section 7 statutory rights, which include employees right to wear union buttons.

Assuming *arguendo* that a waiver defense applied, the Judge correctly concluded that the "contract coverage standard" in *MV Transportation, Inc.*, 368 NLRB No. 66, slip op. at 1-2 (2019) was limited to "pending unilateral-change cases where the determination of whether the employer violated Section 8(a)(5) turns on whether contractual language granted the employer the right to make the change in dispute." There is no allegation in the instant case that Respondent violated Section 8(a)(5). There is no dispute that Respondent had the right to unilaterally change its dress code policy in 2016. The issue in the instant case is whether Respondent violated Section 8(a)(1) by maintaining and enforcing a rule prohibiting employees from wearing Union buttons. Thus, the rationale in *MV Transportation, Inc.* does not apply. Moreover, the Judge was correct is applying the clear and unmistakable analysis. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708-710 (1983). Waiver can occur by express provision, by the conduct of the parties (including past practices, bargaining history, and action or inaction) or by a combination of the two. *American Diamond Tool*, 306 NLRB 570, 570 (1992).

Here, unlike in *Wisconsin Bell*, the past history is clear that technicians had worn union buttons since at least 2009, and Respondent had knowledge of it. So even if the Union waived its right to bargain on the past guidelines, Respondent acquiesced in technicians wearing union buttons during the period of contract negotiations in the Indianapolis area. Moreover, any such

waiver expired when the contract expired. Notwithstanding this, in 2016, Respondent revised its policy to exclude any mention of buttons, and it now governs.

Even if the contract language was considered, the waiver of a statutorily protected right will not be inferred from a general contract provision. Rather, it requires that either the contract language relied on be specific or that an employer show the issue was fully discussed and the union consciously yielded its interest in the matter. Notably, there is **no language** in the contract or revised guidelines that explicitly prohibited the wearing of buttons or other union insignia.[2] Notwithstanding the lack of express language in the contract; the logical interpretation of the contract requires Respondent to comply with Section 7 statutory rights, including employees' rights to wear union buttons when special circumstances exist. Under either standard the waiver argument is not supported.

D. The Judge appropriately ordered that Respondent, an employer engaged in commerce, that engaged in certain unfair labor practices remedy its actions [Exceptions 25-29]

The Judge correctly concluded that Respondent is an employer engaged in commence and as described above violated Section 8(a)(1) of the Act by maintaining a rule since about April 8, 2016 banning premises technicians from wearing a union button stating "CWA" and discriminatorily enforcing that ban on April 16, 2018. The Judge appropriately ordered Respondent to cease and desist maintaining the rule; to rescind the rule; and after the rescission, to advise premises technicians in writing that this rule is no longer being maintained. The Judge also ordered the customary notice and posting requirements and documentation thereof to the Regional Director.

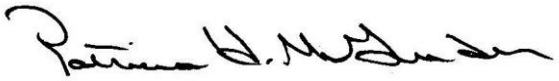
[2] The issue is not about whether Respondent could modify the language.

III. CONCLUSION

For the foregoing reasons, and based upon the records as a whole, the General Counsel respectfully requests that Respondent's Exceptions be denied in their entirety.

SIGNED at Indianapolis, Indiana, this 12TH day of November 2019.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing General Counsel's Brief to the Administrative Law Judge has been filed with the Office of the Executive Secretary through the Board's E-Filing System this 12th day of November 2019. Copies of the filing are being electronically served upon the following persons:

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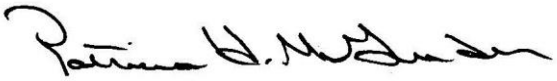

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